

AMENDED IN SENATE MAY 24, 2004

AMENDED IN SENATE APRIL 27, 2004

SENATE BILL

No. 1438

**Introduced by Senators Johnson and Perata
(Coauthor: Senator Murray)**

February 19, 2004

An act to add Article 4 (commencing with Section 19250) to Chapter 3 of Division 19 of the Elections Code, relating to elections.

LEGISLATIVE COUNSEL'S DIGEST

SB 1438, as amended, Johnson. Elections: voting systems.

Existing federal law, the Help America Vote Act of 2002, requires, among other things, that each voting system used in an election for federal office produce a permanent paper record with an audit capacity for that system, allow the voter to verify his or her votes before the voter's ballot is cast, and be accessible for individuals with disabilities. The act provides funding for these purposes.

Existing law requires the Secretary of State to establish the specifications and the regulations governing voting machines, voting devices, and any software used, including the programs and procedures for vote tabulating and testing. The Secretary of State may not approve any voting system that does not fulfill statutory and regulatory requirements. Existing law also requires the Secretary of State to adopt rules and regulations governing any voting technology or systems used in the state that provide blind and visually impaired individuals with access that is equivalent to that provided to individuals who are not blind or visually impaired.

This bill would prohibit, on and after January 1, 2005, a city or county from purchasing a direct recording electronic voting system that does not include an accessible voter verified paper audit trail. In addition, the bill would require that, as of January 1, 2005, all direct recording electronic voting machines in use on that date, regardless of when purchased, include an accessible voter verified paper audit trail.

This bill would require that to the extent federal funds are available for the purposes of this article, those funds be used before state funds.

By increasing the duties of local elections officials, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Article 4 (commencing with Section 19250) is
2 added to Chapter 3 of Division 19 of the Elections Code, to read:

3

4 Article 4. Direct Recording Electronic Voting Systems

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6 19250. (a) On and after January 1, 2005, a city or county may
7 not purchase a direct recording electronic voting system that does
8 not include an accessible voter verified paper audit trail.

9 (b) As of January 1, 2005, all direct recording electronic voting
10 systems in use on that date, regardless of when purchased, shall
11 include an accessible voter verified paper audit trail. If the direct
12 recording electronic voting system does not already include an
13 accessible voter verified paper audit trail, the system shall be



1 replaced or modified to include an accessible voter verified paper
2 audit trail.

3 19251. For purposes of this article, the following terms shall
4 have the following meanings:

5 (a) “Accessible” means that the information provided on the
6 paper printout from the voter verified paper audit trail mechanism
7 is provided or conveyed to voters via both a visual and a nonvisual
8 method, such as through an audio component.

9 (b) “Direct recording electronic voting system” means a
10 voting system that includes, but is not limited to, any of the
11 following:

12 (1) A device or system that employs an electronic touchscreen
13 upon which appear the names of candidates and ballot titles of
14 measures that are to be voted on by touching the designated area
15 on the screen.

16 (2) A device or system that employs an electronic screen upon
17 which appear the names of candidates and ballot titles of measures
18 that are to be voted on by pressing or otherwise activating a
19 designated mechanism of the device.

20 (3) Any device or system that does not require or permit the
21 voter to record his or her vote directly onto a tangible ballot.

22 (c) “Voter verified paper audit trail” means a
23 contemporaneous paper record of a ballot printed for the voter to
24 confirm his or her votes before the voter casts his or her ballot.

25 19252. *To the extent federal funds are available for the*
26 *purposes of this article, those funds shall be used before state*
27 *funds.*

28 SEC. 2. Notwithstanding Section 17610 of the Government
29 Code, if the Commission on State Mandates determines that this
30 act contains costs mandated by the state, reimbursement to local
31 agencies and school districts for those costs shall be made pursuant
32 to Part 7 (commencing with Section 17500) of Division 4 of Title
33 2 of the Government Code. If the statewide cost of the claim for
34 reimbursement does not exceed one million dollars (\$1,000,000),
35 reimbursement shall be made from the State Mandates Claims
36 Fund.

